

**R.D. # 0012-04
Plainsboro, NJ**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**DIEBOLD, INC.¹
Employer**

and

CASE 22-RC-12487

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL 102, AFL-CIO²
Petitioner**

DECISION AND DIRECTIONS OF ELECTION

I. INTRODUCTION

The Petitioner seeks to represent a unit of approximately 38³ employees consisting of all full-time and regular part-time customer solutions engineers (CSEs), assistant customer solutions engineers (ACSEs) and installation solutions engineers (ISEs) employed by the Employer in its North and Central New Jersey geographic areas based in Plainsboro, New Jersey, but excluding all office clerical employees, professional employees, software engineers (SEs), job site coordinators (JSCs),

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The Employer asserts that the Petitioner's unit is approximately 59 employees. There is no record evidence to explain this discrepancy.

guards and supervisors as defined by the Act and all other employees. The Employer argues that the petitioned-for unit is inappropriate and that the only appropriate unit would include, in addition to the three petitioned-for classifications, all SEs and JSCs employed at its North, Central and South New Jersey geographic areas which includes its Horsham, Pennsylvania facility in addition to the petitioned-for Plainsboro facility.

Based on the following facts and analysis, I find appropriate a single facility unit of CSEs, ACSEs, and ISEs employed at the Employer's Plainsboro facility. I further find that the SEs and JSCs do not share a sufficient community of interests with the petitioned-for employees such that it would render the petitioned-for unit inappropriate.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,⁴ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵

3. The labor organization involved claims to represent certain employees of the Employer.⁶

⁴ I fully considered briefs filed by the parties.

⁵ The Employer is an Ohio corporation engaged in the manufacture, sale, installation and servicing of automated teller machines, alarm systems and security systems.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. There is no history of collective bargaining between the Employer and the Petitioner and there is no contract bar or other bar that would preclude processing of the petition.

6. The following employees of Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time and regular part-time customer solutions engineers, assistant customer solutions engineers and installation solutions engineers employed by the Employer in its North and Central New Jersey geographic areas based in Plainsboro, New Jersey, but excluding all software engineers, job site coordinators, fast line supervisors, customer solutions managers, territory resource managers, technical performance managers, office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

II. SINGLE LOCATION UNIT VS. MULTI-LOCATION UNIT

a. Facts

The Employer is a public company that designs, manufactures, installs and services security products for the financial industry. The Employer's products primarily include both electronic security and physical security. Electronic security includes, *inter alia*, automated teller machines (herein ATMs), cardex devices, closed circuit television systems, alarm systems and access control systems. Physical

⁶ The parties stipulated and, I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

security products include, *inter alia*, vaults, safes, underground tube systems and under-counter systems.

As a public company, the Employer has shareholders and a Board of Directors. Operationally, the Employer has Executive Vice Presidents responsible for sales, service, marketing and global affairs. The Employer operates across the United States and, as such, is operationally divided into four service divisions: Eastern, Southeastern, Central and West. The instant matter concerns only the Eastern division, headed by division Vice President Bill Matner. Matner's division extends from as far South as South Carolina to as far North as Maine. Below Matner and other division Vice Presidents are Regional Solutions Managers responsible for specific regions within the division. Regional Solutions Manager Howard Besemer is responsible for New York, New Jersey and the Eastern counties of Pennsylvania and Delaware.⁷ Below Besemer, and in the same managerial line, are Customer Solutions Managers (herein CSM), Territory Resource Managers and Technical Performance Managers. At this point, the Employer's managerial structure and operations become highly localized.

Focusing on New Jersey operations, the State is divided into three areas: North, Central and South. North and Central have a centralized facility located in Plainsboro, New Jersey, and South has a centralized facility located in Horsham, Pennsylvania. The CSM for the North area is Gary Curnal, for the Central area, Jim Morrison and for the South area, Ann Hall. CSMs are responsible for the implementation and service of products for customers within their respective

⁷ Besemer was the Employer's sole witness at the hearing.

geographic boundaries and supervise fast line supervisors, CSEs, and ISEs. All three CSMs, Curnal, Morrison and Hall, report directly to Besemer. The Territory Resources Manager for the North and Central areas is Susan Kelly and for the South area, Nina Turrell. The Technical Performance Manager for the North and Central areas is Carl Drake and for the South, Joe Lirro. The record is unclear as to whom the Territory Resource Managers and Technical Performance Managers report, but the record is clear that the aforementioned are above the CSEs, ACSEs and ISEs in the chain-of-command. Finally, in terms of managerial structure, there is a fast line supervisor responsible for supervising ACSEs. The fast line supervisor for the North and Central areas is Bob Egan and for the South, Greg Davis. The managerial responsibilities and duties of the above individuals are the same in all three of the Employer's New Jersey areas.

Regarding the petitioned-for employees, CSEs are responsible for repairing the equipment assigned to them, ISEs are responsible for the installation of the products that customers have purchased and ACSEs are responsible for clearing paper jams, replenishing paper and other basic-level repairs of the Employer's product. To accomplish these tasks, all CSEs, ISEs and ACSEs (herein collectively referred to as the unit employees or petitioned-for employees) have cell phones, pagers, company vehicles and tool kits that differ slightly among the three classifications. CSEs and ISE have laptops, but there is a plan to issue laptops to ACSEs in the near future.

CSEs receive their assignments by way of an automated system. The Employer's customers either call 1-800-DIEBOLD or electronically interface with a mainframe computer in Canton, Ohio. When the mainframe receives a customer

contact, such is logged electronically, based on the customer's county or zip code. Calls are also logged into the system according to a customer and location site number unique to each. Since the system is automated, calls received are auto-dispatched with the type of product in need of repair and the problem reported by the customer to a primary CSE and a secondary CSE according to the geographic area of the customer. The primary CSE is contacted via cell phone and pager. Upon being called or paged, CSEs wirelessly communicate, by way of laptop, with the mainframe to receive the data logged into the system. If the primary CSE is out on vacation or other approved absence, the system will automatically call or page the secondary CSE. If the primary CSE is already responding to another customer's call or on a project, the instant call remains in the primary CSE's queue until that CSE either finishes the present job and commits to the instant call or refers the call for reassignment automatically through his laptop. Finally, if the secondary CSE is unavailable, the primary CSE would contact the Territory Resource Manager who accesses the system and looks for available support to assign.

ISEs, responsible for the installation of the Employer's product, are assigned job duties in a slightly different manner than the CSEs. In this regard, the Employer's products are manufactured and shipped from Canton either to the job site for installation, to the subcontractor or to Plainsboro or Horsham in the instant matter. When shipment and installation are near, a Territory Resource Manager calls into 1-800-DIEBOLD and logs the shipment and installation dates into the computer; the assignment is made directly to an ISE, as opposed to the automated system making the assignment.

ACSEs are assigned job duties in the same manner as CSEs, except that they currently cannot wirelessly communicate with the mainframe because they do not have laptops. To this end, while ACSEs are contacted by the same modes of communication as CSEs, by cell phone and pager, they must acknowledge their assignments by electronically interfacing with the mainframe through the use of a Telzon call device.

The Employer advertises available CSE, ISE and ACSE employment positions through newspapers, the Internet and technical schools. Technical schools are used as a recruitment tool because the nature of the duties assigned by the Employer to CSEs, ISEs and ACSEs require formal electronic training. Interviews of potential hires are conducted by the facility-based CSM at either Plainsboro or Horsham. CSMs can also decide to hold interviews at local hotels or the like.

CSEs and ISEs are divided amongst three levels - I, II, and III - and ACSEs are divided between levels I and II. The distinction between the levels is based on education, experience and years in the position. CSEs and ISEs receive the same salary, starting at approximately \$25,000 per annum for Level I to approximately \$61,000 per annum for Level III. ACSEs start at approximately \$21,000 per annum; however, Employer witness Besemer did not know the top salary for an ACSE Level II. Starting salaries are determined by the CSM.

Petitioned-for employees receive initial training in basic ATM, electronic and physical security. The record did not reveal where these basic training classes take place, but monthly meetings take place at Plainsboro for the North and Central New Jersey geographic regions and at Horsham for the South New Jersey geographic

region. Other training takes place in Canton; Dellwood, California; Princeton, New Jersey; Atlanta, Georgia; and Dallas, Texas.

The Employer assigns a human resource person to a region within each division; thus, Besemer has one human resource person. The Employer has an employee handbook setting forth the benefits it offers - major medical, stock purchase plans, 401(k) plans, vacation time, sick time, holidays, tuition reimbursement and other federal and state statutory entitlements. All petitioned-for employees receive the same benefits.

b. Analysis

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome "by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit." *Id.* The factors the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; work contacts existing among the several groups of employees; extent of functional integration of operations; degree of centralized versus local control over daily operations and labor relations; and the differences, if any, in the skills and functions of employees. *Id.* at 42, citing *Sol's*, 272 NLRB 621 (1984).

Based upon a review of the record, I find the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single location unit. In this regard, the lack of bargaining history, *Transcontinental Bus System*, 178 NLRB

712 (1969) and the fact that no other labor organization seeks to represent the employees on a broader basis are factors that support the requested unit. *New Britain Transportation*, 330 NLRB 397, 398 (1999).

As to geography, there is no record testimony setting forth the distances between the Plainsboro and Horsham facilities. Therefore, I take administrative notice of the 41 miles that separates the towns of Plainsboro, New Jersey and Horsham, Pennsylvania. While geographical separation is not necessarily conclusive, it is a strong indicator that a single-location unit is appropriate. *Dixie Belle Mills*, 139 NLRB 629 (1962); *Van Lear Equipment, Inc.*, 336 NLRB No. 114 (2001). In *D & L Transportation*, 324 NLRB 160 (1997), the Board found a single bus terminal location to be appropriate where, *inter alia*, the other terminals were between 3 and 21 miles apart. See also, *New Britain Transportation*, above (separation of 6 and 12 miles).

Clearly, there is significant evidence of standardized and centralized control of labor and employment policies, procedures and benefits. The Employer reports that it prides itself on a hierarchy chain-of-command that it asserts flows directly downward from the shareholders and Board of Directors, to Regional Solutions Managers, to its CSMs. The Employer's employee handbook sets forth identical medical benefits, vacation, holidays, sick time, 401(k), stock option opportunities and other related policies for all petitioned-for employees, regardless of geographic location. There is a human resource person in Besemer's region responsible for the administration of the aforementioned. Despite standardized and centralized control, I find that there is substantial local autonomy present in this case. In this regard, facility based CSMs

are responsible for creating budgets for their particular geographic areas. Within that budget, CSMs determine what, if any, increases to give the petitioned-for employees. CSM are ultimately responsible for the day-to-day management and direct supervision of all CSEs and ISEs and indirectly for the ACSEs who report to a fast line supervisor who in turn reports to a CSM. CSMs are responsible for initiating the discipline system upon the petitioned-for employees by first intervening with a coaching or mentoring session with the employee. From there, the CSM offers a written Performance Improvement Program to the employee as a way to avoid further discipline. Should the employee fail the Performance Improvement Program, the CSM notifies Besemer, who then coordinates and clears the appropriate discipline with his human resource person.

While the above facts describe an operation that is centralized and standardized, a single facility unit can be appropriate, notwithstanding a high degree of centralized administration. *L'Eggs Products Inc.*, 236 NLRB 354 (1978). Here, CSMs are vested with significant autonomy over local terms and conditions of employment. *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988) (single facility unit found appropriate where local manager conducted initial screening for new hires and was consulted on major disciplinary issues); *Esco Corp.*, 298 NLRB 837 (1990) (single facility unit found appropriate despite absence of statutory supervisor assigned to excluded facility, where leadman oversaw excluded operation). The record reveals employees must call their CSM or Territory Resource Manager to request and receive approval for vacation and sick time. Further, weekly time sheets are coded by the CSM prior to being sent to the Employer's Canton office.

Other factors in support of a single location unit at Plainsboro include the facts that employees report to Plainsboro on days when there is a Bank Holiday, but not a recognized Employer holiday, such as Veteran's Day. During such days, employees report to their respective geographic areas to complete an inventory of the items in their trucks, cycle count or clean the warehouse. Employees replenish their supplies and receive equipment ordered for use on their jobs from their respective locations (i.e., Plainsboro or Horsham). Finally, as noted above, employee meetings and interviews of potential hires take place at the respective locations.

I also find a lack of substantial employee interchange involving the Plainsboro and Horsham locations. The Employer presented evidence that amounted to a sporadic employee interchange when there are large installation projects or high call volumes in one geographic area. Regarding large installation projects, this primarily occurs when one bank purchases another and there is a need to convert the security features of ATMs, vaults and the like. Besemer testified that the most recent project was the conversion of several security features at PNC Bank. While Besemer did not specifically testify as to the dates or duration of employee interchange, he did testify that one Plainsboro-based ACSE assisted South New Jersey with the PNC Bank conversion. Besemer also testified that a Central New Jersey CSE, Mr. Tonks, assisted North New Jersey with the PNC Bank conversion. Regarding high call volumes in a geographic area, the record reveals that when the workload is such that secondary CSEs take calls from primary CSEs, there are instances in which the secondary tech assigned came from a bordering geographic area. Besemer did not give any specifics, rather just an example that the CSM may pull a CSE from Central

New Jersey to work in Atlantic City, New Jersey (part of the South New Jersey geographic area), a high peak area. When probed as to the frequency of this interchange, Besemer noted “it’s hard to determine what the frequency on that is”, “it’s peaks and valleys of our business.”

This minimal showing made it difficult to determine the percentage of the work that has been performed by North and Central New Jersey CSEs, ISEs and ACSEs for South New Jersey and vice-versa. The party opposing the single-facility presumption has the burden of presenting sufficient evidence to rebut that presumption and must establish the context and percentage of interchange among the total number of employees. See *New Britain Transportation*, above. The Employer's limited evidence of interchange does not satisfy this burden.

Further, even if the Employer's evidence were given significant weight, that evidence would be insufficient to establish substantial employee interchange. Only one employee has been temporarily transferred to perform work for South New Jersey. Further, a temporary interchange of employees in such limited numbers does not establish that North and Central New Jersey rely upon the work force of South New Jersey or is relied upon by South New Jersey to operate an integrated operation. *New Britain Transportation*, above (200 instances of temporary interchange do not approach the degree of significant interchange where Employer employs over 190 employees). Compare *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met where 50 percent of the work force came within the jurisdiction of other facilities on a daily basis); *Dayton Transport Corp.* 270 NLRB 1114 (1984) (presumption rebutted where there were approximately 400-425

temporary employee interchanges between facilities in one year among a workforce of 87).⁸

Finally, while there is evidence of transfers when there are positions available in a geographic area that a current employee wishes to move to, those transfers are voluntary. The Board gives less weight to voluntary transfers in determining whether employees from different locations share a common identity. *D&L Transportation*, above at 162, fn. 7, citing *Dayton-Hudson Corp.*, 227 NLRB 1436, 1438 (1977).

In sum, I find that the significant autonomy vested in local management, the considerable geographical separation of the Plainsboro facility from the Horsham facility and the lack of substantial employee interchange outweigh the centralized control of the Employer's labor policies. Therefore, I find that the single-location presumption has not been rebutted and that the requested unit scope is appropriate.

III. SOFTWARE ENGINEERS (SES) AND JOB SITE COORDINATORS (JSCs) COMMUNITY OF INTEREST

a. Facts

There are two JSCs in New Jersey, but the record is unclear as to what, if any, geographic area they are assigned to. The record reveals that JSCs report to Territory

⁸ In one Board case, *Trane*, 339 NLRB No. 106 (July 29, 2003), the Board distinguished *New Britain Transportation*, above, finding that an employer overcame the presumptive appropriateness of a single facility unit despite evidence of employee interchange that was of only a general nature. However, in *Trane*, the Board determined that the lack of specific evidence as to interchange was combined with other factors, including the absence of any local management or supervision at one facility indicating that there was no local autonomy at that facility. That is not the case here. In *Trane*, the employer's witness testified to 'hundreds' of transfers between facilities each year, an easily observable pattern that, if true, the Board described as 'unchallenged.' Here no such easily observable pattern was evidenced, rather the Employer could only point to a limited number of transfers.

Resource Managers or CSMs, but there is no indication where they are based. JSCs are responsible for interacting with the Employer's project manager or customers' project managers at and before construction of customers' facilities. Pre-construction responsibilities of the JSCs include supplying the product blueprints to customers that include the product lithos, number of wall openings and measurements such as height, depth and thickness. JSCs also ensure the Employer's product is correctly shipped from Canton to either the geographic location (i.e., Plainsboro or Horsham) or the construction site and that the product is installed to the customers' specifications. During construction, JSCs monitor the stages of the construction or the project as it progresses. JSCs do not visit every construction site; rather they visit only those the Employer considers large projects. In fact, one employee testified that in the past year he has run into only one JSC, one time.

There are five SEs in New Jersey divided amongst customers, not geographic area. The record reveals that SEs report to local SE supervisor Bob Shea, based in Plainsboro, who in turn reports directly to an individual in Canton. SEs are responsible for the software of the Employer's product. To this end, SEs create custom graphics for customers, establish and load software, develop IP protocols with firewalls and test the software to ensure effectiveness. SEs visit the customers' testing labs where they create and test the graphics in the presence of the customer, thus permitting the customer to go through the internal tests, verifying that the software and the configuration are what they want. Testing labs are separate facilities customers operate and are not the sites at which customers build, for example, new

branches. As a result, SEs do not typically go to sites to install software that they have created.

b. Analysis

There is nothing in the Act that requires the unit for bargaining be the *only* appropriate unit, the *ultimate* appropriate unit or the *most* appropriate unit; the Act requires only that the unit *be* appropriate, i.e., that it insure to employees in each case “the fullest freedom in exercising the rights guaranteed by [the] Act.” *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 259 NLRB 109 (1989). In making unit determinations, the Board’s task is not to determine *the* most appropriate unit, but simply to determine *an* appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In doing so, the Board looks “first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer’s proposals.” *Dezcon, Inc.*, above at 111.

In determining whether a unit is appropriate, the Board considers whether the employees share a community of interests. The factors the Board reviews in making this decision are well-established and include the training and skills of employees, their hours of work and compensation, the extent of interchange and contact among employees, whether there is common supervision and the bargaining history or absence thereof at the Employer’s facility. *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). An application of the foregoing to the instant case makes clear that the Petitioner’s unit is appropriate for the purposes of collective bargaining.

In this regard, the record reveals that the training and skills of JSCs and SEs differ from the petitioned-for employees sought by the Petitioner. Regarding training, JSCs must have a background in construction and SEs must have a background in software development. None of the petitioned-for employees are required to have backgrounds in construction and/or software development. Quite the opposite, Besemer testified that unit employees are required to have some formal technical education, not backgrounds in construction or software development. Regarding skills, JSCs deal with blueprint specifications and SEs with software development. Again, this differs from the hands-on field work performed by the petitioned-for employees.

Because Employer witness Besemer was unsure as to the hours of work or compensation JSCs and SEs receive, the Employer has failed to present sufficient evidence to make a determination as to whether JSCs and SEs share common hours and compensation with the petitioned-for employees.

The record reveals that there is little or no interchange and contact between JSCs, SEs and the petitioned-for employees. JSCs and SEs spend little time in the field. In fact, JSCs only occasionally use tools and there is no evidence that SEs use tools. This is in stark contrast to the petitioned-for employees who use tools on a regular basis.

Finally, JSCs, unlike the petitioned-for employees, who are primarily supervised by the CSM or the fast line supervisor, are separately supervised by a Territory Resource Manager. The record reveals SEs report to a software supervisor

who in turn reports directly to an individual in Canton thus, bypassing local supervision.

Based on the above and the record as a whole, I find that JSCs and SEs do not share a sufficient community of interests with the petitioned-for employees to compel their inclusion in the unit. Therefore, JSCs and SEs will be excluded from the unit found appropriate herein.

IV. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the

strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **International Brotherhood of Electrical Workers, Local 102, AFL-CIO**.

V. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the voting groups found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **July 2, 2004**. No extension of time to file this list shall be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by **July 9, 2004.**

Signed at Newark, New Jersey this 25th day of June 2004.

/s/Gary T. Kendellen

Gary T. Kendellen, Regional Director
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